

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

GANGADHAR B. MULE (ORIGINAL APPLICANT), APPELLANT v.
SHIVLINGRAO JAGDEVRAO AND OTHERS.*

1899.

August 1.

Guardian—Minor—Remuneration of guardian—Order refusing remuneration not appealable—Guardian and Wards' Act (VIII of 1890), Secs. 22, 45 and 47.

A Názir of the District Court was appointed guardian of the property of certain minors, but no provision as to his remuneration was made at the time of his appointment. Subsequently he applied for remuneration on his transfer to another appointment. The Judge passed an order refusing to allow any remuneration, on the grounds that his accounts had been badly kept and the estates had been mismanaged. The Názir appealed against the order.

Held, that the order was not appealable.

APPEAL against the order of E. M. Pratt, District Judge of Skolápur-Bijápur, in the matter of an application by a guardian of the property of certain minors for the payment of his remuneration.

The applicant, who was a Názir of the District Court of Bijápur, had acted as guardian to certain minors. Being about to be transferred to another appointment, he was required by the Court to furnish accounts of the estates which had been under his management, and an auditor was appointed to audit them. The applicant furnished the accounts and applied for remuneration for his management. The auditor, however, having reported unfavourably with respect to the accounts, the Judge refused to allow any remuneration. The applicant now appealed from the order of refusal. He made the minors and the new guardians respondents to his appeal.

Mahadeo V. Bhat for the respondent No. 1:—No appeal lies against the order refusing remuneration. No allowance was fixed by the Court under section 22 of the Guardian and Wards' Act (VIII of 1890) at the time of the applicant's appointment as guardian, and none could be allowed subsequently.

Mahadeo B. Chavbal for the appellant (applicant):—The effect of the order disallowing remuneration will be to fine the applicant Rs. 1,772-2-7 which he has drawn as fees at 5 per cent. according to general practice. It is substantially an order

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imposing a fine under section 45 of the Guardian and Wards' Act. It is, therefore, appealable under section 47 of the Act.

PARSONS, J.:—In this case the appellant, who was the Názir of the District Court of Bijápur, was appointed at various times guardian of the property of the ten minors who have been made the respondents. Having been transferred from Bijápur, he was ordered to hand over charge of the estates to his successor and submit accounts of his management. He did so and asked for remuneration. The District Judge refused to allow him any remuneration on the grounds that the accounts were irregularly and badly kept, that the estates had been mismanaged, and that considerable expense had been incurred by the employment of paid kárkúns to write the accounts and manage the estates. Against that order the present appeal has been filed. We think that no appeal lies.

Section 22 of the Guardian and Wards' Act, 1890, provides that "a guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties." In the present case no allowance was fixed and made payable to the guardian in the orders of appointment. A claim, therefore, to remuneration could only be based upon a *quantum meruit*, and the Judge apparently has considered and disposed of it as such. The Act clearly gives the Judge a discretion in the matter, and it allows of no appeal against his order.

It was sought to bring the order in the present case within the terms of section 45, which would be an appealable order under section 47. It was argued that the order disallowing remuneration was virtually one which fined the appellant in the sum of Rs. 1,772-2-7, since that was the amount of remuneration which the appellant was entitled to, and claimed, at 5 per cent. under the general practice. We do not, however, think this argument is sound. The appellant has not been shown to be contumacious and was not fined as such under section 45. The Judge merely exercised the discretion vested in him by section 22 and thought fit to allow him no remuneration. Against that order there is no appeal allowed by the Act. We dismiss the appeal with costs.

Appeal dismissed.